



U.S. Citizenship
and Immigration
Services

C/

FILE:

Office: TEXAS SERVICE CENTER

Date:

Jul 22 2004

IN RE:

Petitioner:

Beneficiary:

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a synagogue. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a Jewish program coordinator. The director determined that the petitioner had not established that the proffered job qualifies as a religious occupation.

On appeal, the petitioner submits a brief.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

- (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

- (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The regulation at 8 C.F.R. § 204.5(m)(3)(ii)(D) requires a petitioner for a special immigrant religious worker to show that the alien is qualified in the religious occupation. Pursuant to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

On appeal, counsel asserts that the position is clearly a religious occupation as the religious leader of the petitioner has declared it to be such. This argument is clearly not persuasive, as the unsupported assertion by the petitioner is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, while the determination of an individual's status or duties within a religious organization lies with that organization, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with Citizenship and Immigration Services (CIS). Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). Additionally, despite counsel's contention to the contrary, the burden never shifts to CIS to disprove an alleged fact contained within the petition for benefits. Section 291 of the Act, 8 U.S.C. § 1361.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

CIS therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner states that it offers a wide of educational, religious and cultural programs for the Jewish community. These include Torah classes, classes on the Code of Jewish Law, Basic Hebrew, Talmud, and Jewish Mysticism. According to the petitioner, the beneficiary initiated and coordinated these programs and acts as the liaison between the petitioner and the Latin Jewish community in the area. The petitioner's rabbi states that the position requires expertise in Judaism and an extensive knowledge of all aspects of Jewish religious programs. The programs designed by the beneficiary have included all aspects of living the Jewish lifestyle in the modern world. The evidence establishes that these programs are directly related to the religious creed of the organization, are an inherent part of the Jewish faith, and teach adherence to its religious tenets. The position requires a person with knowledge of the religion beyond what would be expected of an ordinary member of the congregation.

The petitioner states, and the record reflects, that the beneficiary has been working in the proffered position for the two-year qualifying period since arriving in the United States on an R-1 visa in June 2000.

The petitioner has adequately established that the position of Jewish program coordinator for this religious organization is a religious occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained. The petition is approved.